IN THE HIGH COURT OF UTTARANCAL AT NAINITAL

WRIT PETITION NO. 171 (MS) OF 2006

Hardalip Singh,
S/o Sri Santa Singh,
Bazpur, Tehsil-Bazpur,
District – Udham Singh Nagar. .....Petitioner.

Versus

1. Civil Jude (Junior Division), Kashipur, Udham Singh Nagar.
2. Bhajan Singh, S/o Narayan Singh, R/o Bazpur Road, Kashipur, District Udham Singh Nagar.
3. Arvind Singh, S/o Pritam Singh, R/o New Colony, Kalagarh, District-Bijnore. ..... Respondents.

Mr. Rajeev Sharma, Advocate for the petitioner.
Learned Standing Counsel for the respondent no. 1.

Dated: 10.04.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for setting aside the order dated 27.01.2006 (Annexure-1) passed by Civil Judge (Junior Division), Kashipur, Udham Singh Nagar i.e. respondent no. 1 in Civil Suit 140/2000 titled Bhajan Singh Vs. Arvind Singh & others and to pass appropriate order or direction to the respondent no. 1 Civil Judge(Junior Division), Kashipr, Udham Singh Nagar to implead the petitioner as respondent in Civil Suit No. 140/2000 and decide the matter on merits.

Briefly stated, a civil Suit for permanent injunction being Suit No. 140/2000 was filed by the respondent no. 2 with the prayer to restrain the respondent no. 3 i.e. Arvind Singh and Bhupendra Singh from interfering in the peaceful possession of the land in dispute situated at Mauja Ujjain Tehsil-Kashipur, District Udham Singh Nagar. Said suit was filed by the respondent no. 2 in relation to Khasra No. 105 Rakba o-040 hect., Khasra No. 106 Rakba 0-067 hectare, Khasra No. 109 Kha, Rakba 0-049 hectare, Khasra No. 110 Rakba 0-065 hectare total rakba 0-223 hectare situated at Mauja Ujjain Tehsil Kashipur, District Udham Singh Nagar.

The petitioner has submitted that for some malicious reasons, the land of the petitioner has been shown in the site plan (Naksha Nazri) produced by the respondent no. 2 in Civil Suit No. 140/2000 as he is not a party in the said Suit.

Petitioner has submitted that the Court below has appointed an Advocate Commissioner, who, according to the petitioner, gave his commission report with collusion of respondent no. 2 and did not bring true facts before the Court and wrongly described the land.

Aggrieved by the aforesaid fact, the petitioner filed an imleadment application under Order 1 Rule 10 C.P.C. dated 17.05.2005 in Suit No. 140 of 2000 before the Civil Judge (Junior Division) Kashipur, Udham Singh Nagar stating that he is a necessary party to be impleaded in the Suit for the proper adjudication of the case as due to wrong report of advocate commissioner, he has suffered a great loss.

On 27.01.2006, the Civil Judge (Junior Division), Kashipur Udham Singh Nagar has rejected the impleadment application filed by the petitioner.

A counter affidavit has been filed by the respondent no. 2, where it has been stated that Khata No. 202 is at present in

the name of the respondent no. 2 and he is recoded Bhumidhar and Plot no. 111 is not in dispute in the Khatauni (Annexure C.A. No. 1 to the counter affidavit).

However, in view of the above, the writ petition is dismissed at this stage as the plot no. 111 concerning the petitioner is not in dispute. In case in any manner the intrest of the petitioner is affected, he may apply afresh for being impleaded as a party and in order to resolve the controversy, the petitioner may be permitted to contest the proceeding.

Subject to the aforesaid observations, writ petition is dismissed. No order as to costs.

(Rajesh Tandon, J.)

10.04.2006
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